IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 900 OF 2006
IN
CHAMBER SUMMONS NO. 1469 OF 2006
IN
SUIT NO. 1005 OF 2005

Brookhill Tower "C" & "D" Wing
Co-op.Hsg.Society Ltd., .. Appellant.

V/s.

1. Bhagat Erectors & Dev.(I) Ltd. .. Respondents.
and others.

Mr. Nusrat Shah with Ms. P.D.Contractor & Mr.A.K.Gupte i/by Mr.R.S.Mishra for the Appellant.

Mr.Sanjay Jain i/by Mr.R.B.Jain for the Respondent No.1.

Mr.M.S.Raje i/by Mr.R.A.Thorat for the Respondent No.4.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 18th DECEMBER, 2006.

P.C.:

. We heard the counsel for the Appellant and the counsel for the Respondent No.1. Other respondents are not necessary parties for disposal of the Appeal.

2. The order dated 16.08.2005 passed by the Division Bench in Appeal No.561 of 2005 records thus :

"The learned counsel for the Appellant states

that the Appellant will deposit a sum of Rs.1,74,000/- in this Court with regard to Flat No.C-701, within a period of two weeks from today .....".

3. The Appellant in the aforesaid order, is the present Respondent No.1. Thus the present Respondent No.1 in compliance of the statement made before the Division Bench, deposited the amount of Rs.1,74,000/-. The present Appellant claims that this amount of Rs.1,74,000/- is towards the Appellant's dues (Society's dues). It may be also noticed here that Appeal No. 561 of 2005 was from Notice of Motion No.1049 of 2005. The said Motion was withdrawn by the Appellant herein on 8th November, 2006 with liberty to take out fresh notice of motion, claiming the same reliefs after amending the plaint.

4. The Appellant herein (Org.Plaintiff) then took out another Notice of Motion No. 4236 of 2006 and Chamber summons for amendment to the plaint. In the said Notice of Motion as well as in the Chamber Summons, the present Appellant prayed that the Respondent No.1 herein, be prevented from withdrawing the amount of Rs.1,74,000/- deposited before this court pursuant to

the statement made before the Division Bench on 16.08.2005. The learned motion Judge by the order dated 7th of December, 2006 observed that the chamber Judge has already declined to grant ad-interim relief and the chamber summons is still pending; the plaintiff's remedy is by way of an Appeal from that order and not by way of the Notice of Motion. The chamber Judge vide order dated 27th November, 2006, refused to prevent the defendant from withdrawing the amount of Rs.1,74,000/- and granted liberty to the Appellant to move the motion Court by filing a fresh Motion. It would be thus seen that the motion Judge shunted the Appellant from the motion Court to move the Chamber Judge and the Chamber Judge shunted the Appellant to move the motion Court afresh by filing fresh Motion. Like the shuttle cock, the Appellant has been thrown from motion court to the chamber Judge and from chamber Judge to motion court, which in our view, could have been easily avoided. Be that as it may, the fact of the matter is that pursuant to the liberty granted in the order dated 8th of November, 2006, admittedly , Appellant has taken out a fresh notice of motion, being Notice of Motion No. 4236 of 2006. Since the Respondent No.1 herein voluntarily made the statement to deposit the amount of Rs.1,74,000/- before the appellate Bench on 16.08.2005, in our considered view, the said amount should remain

deposited until disposal of the Notice of Motion No.4236 of 2006.

5. We, accordingly, dispose of the Appeal by following order :

ORDER

i. The amount of Rs.1,74,000/-, deposited by the Respondent No.1 pursuant to the order dated 16.08.2005, shall remain deposited before the Court until the disposal of the Notice of Motion No.4236 of 2006 and for a period of one week thereafter from the disposal of the said Notice of Motion.

ii. If the Notice of Motion No.4236 of 2006 is dismissed by the motion Judge and there is no stay order by the appellate Bench within two weeks there-from, the Respondent No.1 shall be entitled to withdraw the amount of Rs. 1,74,000/- without further reference to the Court.

6. Appeal stands disposed of.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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